

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeals of        )  
JAMES R. AND ROSANA GIBSON and        }  
EDWARD J. AND JIMMIE LEE KRAUSNICK    )

Appearances:

For Appellants: Archibald M. Mull Jr., Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel

O P I N I O N

These appeals are made pursuant to Section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax against James R. and Rosana Gibson in the amount of \$502.13 for the year 1951, against James R. Gibson in the amounts of \$442.60 and \$612.25 for the years 1952 and 1953, respectively, against Rosana Gibson in the amounts of \$442.60 and \$612.25 for the years 1952 and 1953, respectively, against Edward J. and Jimmie Lee Krausnick in the amount of \$531.42 for the year 1951, against Edward J. Krausnick in the amounts of \$438.70 and \$610.51 for the years 1952 and 1953, respectively, and against Jimmie Lee Krausnick in the amounts of \$438.70 and \$610.51 for the years 1952 and 1953, respectively.

Appellants James R. Gibson and Edward J. Krausnick were partners in a business known as Krausnick and Gibson. The partnership was engaged in bookmaking activities (taking bets on horse races) during the years 1951, 1952 and 1953. Appellants Rosana Gibson and Jimmie Lee Krausnick are the wives of Appellants James R. Gibson and Edward J. Krausnick, respectively.

Respondent determined that all partnership deductions, including payouts to winning bettors, should be disallowed for the period from May 3, 1951, the effective date of Section 17359 of the Revenue and Taxation Code, through 1953.

Section 17359 (now 17297) provided, in substance, that no deductions shall be allowed on income from certain defined illegal activities, or from activities that tend to promote or further or are associated or connected with the illegal activities. Bookmaking is one of the illegal activities so defined. (Penal Code, § 337a.)

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The partnership was engaged in an illegal bookmaking operation during the years under appeal and Respondent was therefore correct in applying Section 17359. To the gross income reported by the partnership in its information returns, Respondent added the wagering losses shown on the partnership accounting records plus the amount collected to pay the 10 percent Federal wagering tax. Respondent's auditor testified that the resulting gross income figure was then compared and found to agree with amounts reported on Federal wagering tax returns. Respondent's computation of gross income appears reasonable and we therefore accept its determination. (See Hetzel v. Franchise Tax Board, 161 Cal. App. 2d 224 [326 P. 2d 611].)

Appellants contend that there is no basis for applying Section 17359 to Appellants Rosana Gibson and Jimmie Lee Krausnick since there is no showing that they were engaged in any illegal activities. The income reported by them, however, was derived directly from illegal bookmaking activities carried on by their husbands. The express language of Section 17359 that "no deductions shall be allowed to any taxpayer on any of his gross income derived from illegal activities" is clearly intended to preclude the deduction of all expenses incurred in producing such income. It is irrelevant, under the circumstances, that the Appellant-wives were not themselves engaged in illegal activities.

Appellants contend, finally, that Section 17359 was unconstitutional. It is our well-established policy not to pass on the constitutionality of a statute in an appeal such as this, but it may be observed that the constitutionality of this section as applied to a bookmaker was upheld in Hetzel v. Franchise Tax Board, supra,

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on protests to proposed assessments of additional personal income tax against James R. and Rosana Gibson in the amount of \$502.13 for the year 1951, against James R. Gibson in the amounts of \$442.60 and \$612.25 for the years 1952 and 1953, respectively, against Rosana Gibson in the amounts of \$442.60 and \$612.25 for the years 1952 and 1953, respectively, against Edward J. and Jimmie Lee Krausnick in the amount of

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\$531.42 for the year 1951, against Edward J. Krausnick in the amounts of \$438.70 and \$610.51 for the years 1952 and 1953, respectively, and against Jimmie Lee Krausnick in the amounts of \$438.70 and \$610.51 for the years 1952 and 1953, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 7th day of August, 1963,  
by the State Board of Equalization.

John W. Lynch, Chairman

Paul R. Leake, Member

Richard Nevins, Member

Geo. R. Reilly, Member

  , Member

ATTEST: H. F. Freeman, Secretary